

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 13 CR 1551 JB

DAISY ALANIZ,

Defendant.

FIFTH UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW the defendant by and through counsel and moves this court to continue the trial currently set for December 23, 2013 at 9:00 a.m. As grounds, defendant states:

1. Ms. Alaniz has been found incompetent and has been committed to the custody of the Bureau of Prisons for evaluation and treatment. (Doc # 49) Speedy trial is tolled from the date of filing of the original motion for competency evaluation on June 18, 2013 (Doc # 31) to the entry of an order finding Ms. Alaniz competent or further proceedings consistent Chapter 313 of Title 18 of the Federal Criminal Code (Offenders with Mental Disease or Defect). 18 U.S.C. § 3161(h)(1)(A).

2. “. . . [T]he Constitution does not permit trial of an individual who lacks ‘mental competency.’ ” *Indiana v. Edwards*, 554 U.S. 164, 170 (2008). Pursuant to 18 U.S.C. § 3161(h)(7), the ends of justice served by not putting incompetent people on trial and the orderly and timely resolution of the issue of Ms. Alaniz’s competency outweigh the best interests of the public and the defendant in a speedy trial. Consequently, a continuance of trial is appropriate.

3. Ms. Alaniz arrived at the Federal Medical Center for Prisoners in Carswell, Texas on September 18, 2013. The Warden of the facility has stated that their evaluation will be completed by January 15, 2014. (Doc # 55) If the doctors at Carswell feel that Ms. Alaniz is restored to competency, they will request her in custody return to New Mexico for further proceedings. The U.S. Marshals Service estimates that it will take several weeks for Ms. Alaniz to be transported to New Mexico. Once Ms. Alaniz is returned to New Mexico the court will be required to schedule and hold a competency hearing to make its own determination of competency. If Ms. Alaniz is found competent, counsel will need time to prepare for trial and/or attempt to negotiate a plea agreement. At a minimum, assuming an unusually expeditious transportation of Ms. Alaniz, it will take at least 2 months from December 23, 2013 to resolve the issue of Ms. Alaniz' competency and allow a reasonable amount of time to prepare for trial.

4. Counsel for the government, AUSA Chuck Barth, does not oppose this motion.

WHEREFORE, the defendant respectfully requests this court to continue the trial currently set for December 23, 2013 at 9 a.m. for at least 2 months and for such other and further relief as the court deems proper.

I hereby certify that a true copy of the foregoing was delivered to AUSA Chuck Barth through CM/ECF this 11th day of December, 2013.

Electronically filed

Respectfully submitted,

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Electronically filed
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